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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,089	01/15/2002	Allan Ginsburg	033323-002	1255

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EXAMINER

KRAMER, JAMES A

ART UNIT PAPER NUMBER

3627

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/045,089	<b>Applicant(s)</b> GINSBURG ET AL.	
	<b>Examiner</b> James A. Kramer	<b>Art Unit</b> 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forsythe et al. in view of Hotz.

Forsythe teaches a method and system for selecting and purchasing media advertising.

With respect to claim 1, Forsythe teaches a revenue maximization system which determines a price for units of inventory based on predetermined pricing considerations wherein said units are advertising opportunities (see for example column 1, lines 33-39 and column 2, lines 17-37). Examiner notes that generating a cost-per-spot represents price for units based on predetermined pricing considerations.

With respect to claim 1, Forsythe teaches a central information storage system which generates scenarios wherein various combinations of units are grouped together to meet a buyer's criteria wherein the buyer's criteria includes number of people and frequency people will be exposed to the advertisement units (see for example column 7, lines 5-35 and 56-57).

Forsythe further teaches a scenario planner to display various scenarios generated by the central information storage system (see for example column 7, lines 15-18).

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With respect to claim 1, Forsythe does not specifically teach a performance measurement system for measuring performance of a medium in which the units are used. Examiner notes here that one of ordinary skill in the art would recognize that the invention of Forsythe requires some sort of performance measurement system in order to properly generate a cost-per-spot..

Hotz teaches Market research companies, exemplified by "The Arbitron Company", "ACNielsen Company" and "Media Metrix" and "NetRatings" can be most generally described as providing statistical surveys of consumer behavior which includes; radio listening, television viewing, Internet usage, consumer purchasing and demographic data. This data can be used for setting advertising rates for radio and television and for tracking consumer behavior with respect to a particular company or product (see column 1, lines 57-66).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Forsythe to specifically include the performance measurement system for measuring performance of a medium in which the units are used as taught by Hotz in order to properly generate the cost-per-spot of Forsythe.

Forsythe further teaches the predetermined pricing considerations include category of buyer (see for example column 1, lines 29-31), unsold units (see for example column 3, line 7) and budget.

Forsythe further teaches wherein the buyer's criteria further includes the desired budget for purchase of units and performance measurements (see for example column 7, lines 55-57).

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Applicant further claims that the claimed revenue maximization system utilizes functions of sell-out forecasting, revenue forecasting, fuzzy rules and price adjustment as well as economic factors which influence demand and various measurement noises are filtered out of these factors. Examiner notes that these features are all included within system such as TAPSCAN, TVSCAN, and the other software noted from SMARTPLUS, Strata Software, COREMedia Systems, Inc., Telmar and SQAD and SPARC. (see column 2, lines 17-37).

Examiner notes that claims 8-21 are substantially similar to claims 1-7 and therefore are unpatentable as obvious in view of the rejection of claims 1-7 as presented above. Applicant is reminded that any argument in contrast to this statement is an indication of patentably distinct subject matter and may require a restriction requirement.

### ***Response to Arguments***

Applicant's arguments, see Request for Reconsideration, filed 12/28/05, with respect to the rejection(s) of claim(s) 1-21 under 35 USC 103(a) as being unpatentable over Fox in view of '047 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection has been made in the Office action.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Article "COMPANY TOWN; Clear Channel to Buy SFX Entertainment; Mergers: \$3-billion stock deal would enable media firm to package its outlets with arena sponsorships for advertisers" by Hofmeister teaches that more than one year before Applicant's filing date advertising opportunities, including billboard, TV, radio and arena sponsorships were bundled and presented to advertisers.

Article "Deal creates radio giant" by Moon teaches that more than one year before Applicant's filing date advertising opportunities, including billboard, TV, radio and arena sponsorships were bundled and presented to advertisers.

Article "Deal May Affect Ties of Stations To Polaris" by Mnich teaches that more than one year before Applicant's filing date advertising opportunities, including billboard, TV, radio and arena sponsorships were bundled and presented to advertisers.

US Patent Number 5,515,270 to Weinblatt teaches correlating purchasing behavior of consumer to advertisements

US Patent Number 6,430,603 to Hunter teaches selection and purchasing of Billboard (outdoor) advertisement

US Patent Number 6,286,005 to Cannon teaches advertising optimization.

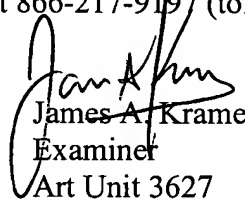
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Kramer whose telephone number is (571) 272 6783.

The examiner can normally be reached on Monday - Friday (8AM - 5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272 6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James A. Kramer  
Examiner  
Art Unit 3627  
3/3/06

jak